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#17

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RE: Patent Term Extension
Application for
U.S. Patent No. 4,241,057
Issued: December 23, 1980

NOTICE OF FINAL DETERMINATION

A determination has been made that U.S. Patent No. 4,241,057, issued December 23, 1980, is eligible for patent term extension under 35 USC 156. The period for extension has been determined to be two (2) years.

The period of extension has been calculated using the FDA determination of the length of the regulatory review period published in the Federal Register on April 15, 1989 as follows:

$$\begin{aligned}\text{Period} &= 1/2 \text{ (Testing Phase)} + \text{Approval Phase} \\ &= 1/2 (1590) + 1341 \\ &= 2136 \text{ days}\end{aligned}$$

Since the regulatory review period began (May 10, 1980) before the patent issued (December 23, 1980), only that portion of the regulatory review period occurring after the date the patent issued has been considered in the determination of the length of the extension period. 35 USC 156(c) (From May 10, 1980 to December 23, 1980 is 227 days; this period is subtracted from the number of days occurring in the testing phase according to the FDA determination of the length of the regulatory review period: $1817 - 227 = 1590$ days). No determination of a lack of due diligence was made. The exception of 35 USC 156(c)(3) does not operate to reduce the period determined above. The limitation of 35 USC 156(g)(6)(c) applies in the present situation because Patent No. 4,241,057 was issued (December 23, 1980) before the date of enactment (September 24, 1984) of 35 USC 156; the date of exemption under Section 505(i) of the Federal Food, Drug and Cosmetic Act involving Ceradon became effective (May 10, 1980), was before the date of enactment, and the product was not approved for commercial marketing or use (December 30, 1988) before the date of enactment. Since the period of extension calculated under 35 USC 156(c) for Patent No. 4,241,057 and Ceradon cannot exceed two (2) years under 35 USC 156(g)(6)(C), the period of extension will be for two (2) years.

A single request for reconsideration of this final determination as to eligibility and the length of extension of the term of U.S. Patent 4,241,057 may be made if filed within one (1) month of the date of this notice. 37 CFR 1.136(a) is not applicable to this time period. It is noted that the applicant for extension of the term of Patent No. 4,241,057 has filed an application for extension of the term of Patent No. 4,161,527, also to the product Ceradon. Only one patent may be extended for any product. 35 USC 156(c) 4. In the absence of an election by applicant, and in accordance with 37 CFR 1.785 (b), if applications are filed for extension of the terms of different patents based upon the same regulatory review period for a product, the certificate of extension of patent term will be issued to the patent having the earliest date of issuance (4,161,527). If issuance of the certificate of extension on U.S. Patent 4,241,057 occurs, the following information will be published in the Official Gazette:

U.S. Patent No. 4,241,057, granted
December 23, 1980 to Kenzo Ishizuka et al
Owner of Record: Takeda Chemical Industries, Ltd.
Title: ANTIBIOTIC COMPOSITIONS
Classification: 514-206
Product Trade Name: Ceradon
Term Extended: 2 years

C.E. Van Horn

Charles E. Van Horn
Patent & Trademark Office

cc: Ronald L. Wilson, Director RE: Ceradon
Health Assessment Policy Staff FDA Docket # 89E-0036
Office of Health Affairs
Food and Drug Administration
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